

ORIGINAL

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FILED

DISTRICT COURT OF GUAM

OCT 30 2006 *mbe*

MARY L.M. MORAN
CLERK OF COURT

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM**

CASSANDRA CHAU TRUONG,
Administratrix of the Estate of ROLAND
ANTHONY BOUDREAU, deceased,

Plaintiff,

vs

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 06-00022

**ANSWER OF THE
UNITED STATES**

Federal Defendant United States of America, by and through its counsel, Leonardo M. Rapadas, United States Attorney for the Districts of Guam and NMI, and Mikel W. Schwab, Assistant United States Attorney for said District, answers Plaintiff's Complaint in like numbered paragraphs as follows:

1. ADMITS that this claim is raised as Federal Tort Claim Act (FTCA) action. The jurisdictional allegations in this paragraph require no response. To the extent this paragraph is deemed to contain allegations of material fact, they are DENIED.

2. The United States is without sufficient information as to Plaintiff's residence and therefore DENIES. The United States DENIES any omissions on its part.

1 3. The United States is without sufficient information as to Plaintiff's
2 authorization to bring suit on behalf of the deceased, or the legal status of any next of kin, and
3 therefore DENIES.

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5 4. The United States ADMITS in part and DENIES in part. The United
6 States ADMITS its ownership of the property, Polaris Point, but DENIES its operation as to the
7 event related to Plaintiff's injury.

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9 5. The United States is without sufficient information to admit or deny the
10 allegations of this paragraph. Said allegations are therefore DENIED.

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12 6. The United States is without sufficient information to admit or deny the
13 allegations of this paragraph. Said allegations are therefore DENIED.

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15 7. The United States is without sufficient information to admit or deny the
16 allegations of this paragraph. Said allegations are therefore DENIED.

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18 8. The United States DENIES the allegations in this paragraph.

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20 9. The United States DENIES the allegations in this paragraph.

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22 10. The United States DENIES the allegations in this paragraph.

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24 11. The United States DENIES the allegations in this paragraph.

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26 12. The United States is without sufficient information to admit or deny the
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1 allegations of this paragraph. Said allegations are therefore DENIED.
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3 13. The United States is without sufficient information to admit or deny the
4 allegations of this paragraph. Said allegations are therefore DENIED.
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6 14. The United States ADMITS.
7

8 15. The United States ADMITS.
9

10 The paragraph beginning with "WHEREFORE" sets forth Plaintiff's prayer for relief to
11 which no response is required. To the extent this paragraph is deemed to contain allegations of
12 material fact, they are DENIED.

13 All allegations not specifically responded to above are DENIED.
14

15 AND FURTHER answering, the United States avers:
16

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 The United States denies that it owed Plaintiff any duty under law; that any of its agents
20 or employees were negligent and /or breached any standard of care due the Plaintiff and/or
21 engaged in any conduct which was the proximate cause of the injuries, damages and losses
22 allegedly incurred by Plaintiff.

23 **SECOND AFFIRMATIVE DEFENSE**

24 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for
25 prejudgment interest against the United States of America.
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1 **THIRD AFFIRMATIVE DEFENSE**

2 Under 28 U.S.C. §2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United
3 States of America.

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5 **FOURTH AFFIRMATIVE DEFENSE**

6 Plaintiffs claim is diminished or completely barred by Guam law regarding
7 comparative/contributory negligence.

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9 **FIFTH AFFIRMATIVE DEFENSE**

10 If Plaintiff suffered injuries as alleged in Plaintiff's Complaint, such injuries were
11 caused wholly or in part by Plaintiff's own negligence. Plaintiff was the proximate cause of the
12 deceased's injuries.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 Plaintiff voluntarily assumed the risk of injury.

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16 **SEVENTH AFFIRMATIVE DEFENSE**

17 The deceased's injuries occurred as a result of Plaintiff's failure to exercise Due Care.

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19 **EIGHTH AFFIRMATIVE DEFENSE**

20 Plaintiff has failed to join indispensable parties.

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22 **NINTH AFFIRMATIVE DEFENSE**

23 Defendant reserves the right to amend its Answer with additional defenses of which it
24 may become aware as discovery progresses and to raise any other matter constituting an
25 avoidance or affirmative defense.

1 **WHEREFORE**, having fully answered all counts of the Complaint, Defendant
2 prays that Plaintiff takes nothing by way of his Complaint against it, that the same be dismissed,
3 and that judgment be awarded in favor of Defendant, together with costs and such other and
4 further relief as the Court deems appropriate in this case.

5 RESPECTFULLY SUBMITTED this 30th day of October 2006.

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8 LEONARDO M. RAPADAS
 United States Attorney

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10 BY: 

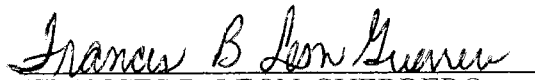
11 MIKEL W. SCHWAB
12 Assistant U.S. Attorney
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CERTIFICATE OF SERVICE

I, FRANCES B. LEON GUERRERO, Legal Assistant, working in the U.S. Attorney's Office, in the District of Guam, hereby certify that a copy of the "Answer of the United States", Civil Case No. 06-00022, "Cassandra Chau Truong, Administratrix of the Estate of Roland Anthony Boudreau, deceased", Civil Case No. 06-00022, was served by personal service to the following Attorney of Record:

Lawrence J. Teker
Teker Torres & Teker, P.C.
130 Aspinall Ave Ste. 2A
Hagatna, Guam 96910

Dated: October 30, 2006


FRANCES B. LEON-GUERRERO
Legal Assistant